



Department of
**Local Government, Sport
and Cultural Industries**



Local Government Act 1995 review
Agile • Smart • Inclusive

Local Government Act 1995 **Review**

Agile • Smart • Inclusive – Local governments for the future

Phase 1: Consultation Paper

8 November 2017

Submitter Contact Person: Alasdair Wardle

1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6210
- 3) Who are you submitting on behalf of?
Yourself
- 4) Local government name:
- 5) Organisation name
- 6) Are you a:
Other

Defining the roles of council and administration: Guidance questions

- 7) How should a council's role be defined? What should the definition include?
- 8) How should the role of the CEO and administration be defined?
- 9) What other comments would you like to make on the roles of council and administration?
- 10) Are there any areas where the separation of powers is particularly unclear?
- 11) How do you propose that these are improved?

Improving relationships between council and administration: Guidance question

12) Do you have any other suggestions or comments on this topic?

I think the roles are adequately defined.

2. Training

2.1 Competencies required to be an elected member

Elected member competencies: Guidance questions

- 13) What competencies (skills and knowledge) do you think an elected member requires to perform their role?

Reading, writing, an understanding of accountability, an understanding of the 'perception of a conflict of interest', a commitment to Council policies and code of conduct, an understanding of the Local Government Act.

- 14) Do these vary between local governments?

Yes

- 15) If so, in what way?

2.2 Funding training

Funding training: Guidance questions

- 16) Who should pay for the costs of training (course fees, travel, other costs)?

It does not matter who pays. You could argue that Councillors should pay personally. Either Council will pay or State Government. Maybe it should be shared three ways?

- 17) If councils are required to pay for training, should a training fund be established to reduce the financial impact for small and regional local governments?

Yes

- 18) Should contribution to such a fund be based on local government revenue or some other measure?

Local Government budget.

Do you have any other suggestions or comments on this topic?

If individuals want to be on Council, they should agree to training.

2.3 Mandatory training

Mandatory training: Guidance questions

- 19) Should elected member training be mandatory?

Yes

- 20) Why or why not?

Training is necessary for them to do the job. If it is argued that mandatory training will be a barrier to individuals nominating for Council particularly in Regional areas, that is a separate issue. If mandatory training is the reason an individual gives for not nominating, I would argue you don't want them on Council.

- 21) Should candidates be required to undertake some preliminary training to better understand the role of an elected member?

Yes

- 22) Should this be Compulsory?

Yes

- 23) Should prior learning or service be recognised in place of completing training for elected members?

No

- 24) If yes, how would this work?

Too complex. Just do the training.

- 25) What period should apply for elected members to complete essential training after their election?

6 months.

2.4 Continuing professional development

Continuing professional development: Guidance questions

- 26) Should ongoing professional development be undertaken by elected members?

Yes

27) If so, what form should this take?

To be determined by WALGA and the Department.

Training: Guidance question

28) Do you have any other suggestions or comments on training?

3. The behaviour of elected members

3.1 Current Situation

Codes of conduct: Guidance questions

29) Should standards of conduct/behaviour differ between local governments?

No

30) Please explain.

We need consistent standards across the State, with significant adherence to State Government standards. Councillors should be accountable to their local community and to the State Government.

Which option do you prefer for codes of conduct and why? Codes of conduct are required. Local governments must adopt a model code, with certain clauses subject to modification. From my experience Codes of Conduct are not well understood or taken seriously by Councillors, particularly in country towns.

31) How should a code of conduct be enforced?

A codes of conduct is a requirement that Councillors meet a certain standard of behavior. I doubt that a CEO has much authority over a Councillor who refuses to acknowledge inappropriate behavior. Some other level of sanction is required that indicates the seriousness of a matter. That may be the the Department of Local Government.

3.2 Regulation of elected member conduct: rules of conduct

Streamlined rules of conduct: Guidance questions

32) Do you support streamlined Rules of Conduct regulations?

No

33) Why?

clear standards need to be maintained

- 34) If the rules were streamlined, which elements should be retained?
Not applicable
- 35) Do you support a reduction in the time frame in which complaints can be made?
Yes
- 36) Is three months adequate?
Yes

Revised disciplinary framework: Guidance questions

- 37) Do you support an outcome-based framework for elected members?
No
- 38) Why or why not?
The proposed option is too vague.
- 39) What specific behaviours should an outcomes based framework target?
No

3.3 Other matters recommended in the 2015-16 review

Application of the Rules of Conduct: Guidance question

- 40) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections?

Yes

- 41) Please explain.

It would be fair to the subject of the complaint to maintain confidentiality.

Offence Provisions: Guidance questions

- 42) Should the offence covering improper use of information be extended to former members of council for a period of twelve months?

Yes

- 43) Why?

Information could be used for personal gain.

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

Yes for certain senior positions.

Confidentiality: Guidance question

- 46) Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved?

Yes

- 47) Why?

It would be fair to the subject of the complaint to maintain confidentiality.

3.4 Reforms to the Local Government Standards Panel and the means to review alleged breaches of the Rules of Conduct Regulations

Sector conduct review committees: Guidance questions

- 48) What do you see as the benefits and disadvantages of this model?
It provides for a gradual escalation where appropriate.
- 49) What powers should the Conduct Review Committee have?
As described above.
- 50) In your opinion what matters should go directly to the Standards Panel?
Serious breaches involving money, personal gain, potentially corrupt behavior, serious conflict of interest.
- 51) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?
- 52) Who should select the members for the pool?
The Minister.
- 53) How many members should there be on the Review Committee?
5
- 54) Are the proposed actions for the Review Committee appropriate?
Yes
- 55) If not, what do you propose?

Review of elected member non-compliance: Guidance questions

- 56) Which of the options for dealing with complaints do you prefer? Why?

Option 2

57) Are there any other options that could be considered?

No

58) Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

Both

3.5 Sanctions and other Standard Panel matters

Mediation: Guidance question

59) Do you support the inclusion of mediation as a sanction for the Panel?

Yes

60) Why or why not?

It is a sensible approach to minor matters.

Prohibition from attending council meetings: Guidance questions

61) Do you support the Panel being able to prohibit elected members from attending council meetings?

Yes

62) Why or why not?

If a serious breach is currently under investigation and review, then in some cases the Elected Member should not attend meeting.

How many meetings should the Panel be able to order the elected member not attend? There should be a limit, beyond which the Member should be dismissed.

63) Should the elected member be eligible for sitting fees and allowances in these circumstances?

No

64) Why

They are not undertaking the work required.

Compensation to the local government: Guidance questions

65) Do you support the Panel being able to award financial compensation to the local government?

No

66) Why or why not?

67) What should the maximum amount be?

Complaint administrative fee: Guidance questions

68) Do you support this option?

No

69) Why or why not?

It is designed to prevent complaints being made.

70) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint?

Yes

71) Is this appropriate?

No

72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?

No

73) Why or why not?

It is not appropriate.

74) What would be an appropriate fee for lodging a complaint?

N/A

75) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?

No

76) Why or why not?

They do not need the money.

Cost recovery to local government: Guidance questions

77) Do you support the cost of the panel proceedings being paid by a member found to be in breach?

No

78) Why or why not?

Too hard to obtain the money.

Publication of complaints in the annual report: Guidance question

79) Do you support the tabling of the decision report at the Ordinary Council Meeting?

Yes

80) Why or why not?

Transparency.

Tabling decision report at Ordinary Council Meeting: Guidance question

81) Do you support this option?

Yes

82) Why or why not?

Transparency

3.6 Elected member interests

Elected member interests: Guidance questions

- 83) Should not-for-profit organisation members participate in council decisions affecting that organisation?

No

- 84) Why or why not?

There is a clear conflict of interest. The fact that it is 'not-for-profit' is irrelevant.

- 85) Would your response be the same if the elected member was an office holder in the organisation?

Yes

Improving the behaviour of elected members: Guidance question

- 86) Do you have any other suggestions or comments on this topic?

4. Local government administration

4.1 Recruitment and selection of local government Chief Executive Officers

Recruitment and selection of local government CEOs: Guidance questions

- 87) Would councils benefit from assistance with CEO recruitment and selection?
Yes
- 88) Why?
A broader perspective and experience to the process.
- 89) How could the recruitment and selection of local government CEOs be improved?
It is a struggle in rural and remote areas to recruit a good CEO. I would like to see a pool of candidates, who can be assigned by the State Government. The role might only be undertaken for 4 or 5 years. It is less of a problem in metro Perth.
- 90) Should the Public Sector Commission be involved in CEO recruitment and selection?
Yes
- 91) If so, how?
Advice, input to the process, participate on a selection panel, involved in verification processes.
- 92) Should other experts be involved in CEO recruitment and selection?
Yes
- 93) If so, who and how?
Corporate sector input.
- 94) What competencies, attributes and qualifications should a CEO have?

Communication skills, technical skills, understand of Local Government environment, breadth of experience in different employment and management situations.

4.2 Acting Chief Executive Officers

Acting CEOs: Guidance questions

- 95) Should the process of appointing an acting CEO be covered in legislation?

Yes

- 96) Why or why not?

It may be a significant role and it should be subject to some level of scrutiny.

- 97) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?

Council.

- 98) Who should appoint the CEO if there will be vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

Council

4.3 Performance review of local government Chief Executive Officers

Performance review of local government CEOs: Guidance questions

- 99) Who should be involved in CEO performance reviews?

Mayor, select Councillors, Department of Local Govt senior officers, external input

- 100) What should the criteria be for reviewing a CEO's performance?

Ability to progress Council goals, skills in working with the community, staff turnover, health and safety records, financial performance of Council, Council compliance on range of factors, organizational culture.

101) How often should CEO performance be reviewed?

Every 2 years.

102) Which of the above options do you prefer?

Option 1. Provides a broader perspective.

103) Why?

No

104) Is there an alternative model that could be considered?

4.4 Extension or termination of the Chief Executive Officer contract immediately before or following an election

Termination or extension of CEO contract around an election: Guidance questions

105) Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?

Yes

106) What length should such a cooling off period be?

6 months

107) For what period before an election should there be a restriction on a council from extending a CEO contract?

Six months

108) Should there be any exceptions to this?

No.

4.5 Public expectations of staff performance

Public expectations of staff performance: Guidance questions

109) Is greater oversight required over local government selection and recruitment of staff?

No

110) Should certain offences or other criteria exclude a person from being employed in a local government?

No

111) If so, what?

Strengthening local government administration: Guidance question

112) Do you have any other suggestions or comments on this topic?

Nil.

5. Supporting local governments in challenging times

Remedial intervention: Guidance questions

- 113) Should the appointed person be a departmental employee, a local government officer or an external party?
Departmental employee
- 114) Why?
They have relevant skills and experience.
- 115) Should the appointed person be able to direct the local government or would their role be restricted to advice and support?
Direct the local government
- 116) Please explain.
To get to this point, the Council needs clear direction and must adopt recommendations.
- 117) Who should pay for the appointed person?
Council
- 118) Why?
Council has failed to avert to problem and has a responsibility to fix it.

Powers of appointed person: Guidance question

- 119) What powers should an appointed person have?
To obtain information, to investigate, to obtain support, to require attendance at meetings and interviews, to report, advise and recommend.

Remedial action process: Guidance questions

120) Do you think the proposed approach would improve the provision of good governance in Western Australia?

Yes

121) Please explain.

It would help re-establish the role of the State Government. Local Councils are ultimately accountable to the State Government.

122) What issues need to be considered in appointing a person?

The nature of the problem, the type of Council, the extent of the work involved.

Supporting local governments in challenging times: Guidance question

123) Do you have any other suggestions or comments on this topic?

6. Making it easier to move between State and local government employment

Transferability of employees: Guidance questions

124) Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?

125)

126) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?

Better understand and experience being shared. Local Government can have a limited perspective and anything done to extend the skills and perspective of Council would be a good thing.

Making it easier to move between State and local government employment: Guidance question

127) Do you have any other suggestions or comments on this topic?

nil.

7. Gifts

7.1 Simplifying the gift provisions

A new framework for disclosing gifts: Guidance questions

128) Is the new framework for disclosing gifts appropriate?

Yes

129) If not, why?

130) Is the threshold of \$500 appropriate?

Yes

131) If no, why?

132) Should certain gifts – or gifts from particular classes or people – be prohibited?

Yes

133) Why or why not?

Developers, real estate agents should be prohibited from giving gifts,.

134) If yes, what gifts should be prohibited?

All gifts.

Excluding gifts received in a personal capacity: Guidance questions

135) Should gifts received in a personal capacity be exempt from disclosure?

Yes

136) If yes, how could 'personal capacity' be defined?

Wedding rings. Clearly personal items, that in the normal family and close relationships would be seen as normal.

137) Should there be any other exemptions from the requirement to disclose a gift over the threshold?

No

138) If so, what should these be? Please justify your proposal.

nil

Gifts: Guidance question

139) Do you have any other suggestions or comments on this topic?

nil

8. Access to information

8.1 Public notices

Public notices: Guidance questions

140) Which general option do you prefer for making local public notices available?

Option 6

Why? Simple, consistent and it acknowledges reality of modern systems.

141) Should the requirements for any notice in the Supplementary Information - Public Notices be changed?

No

142) Please list and explain the reasons for the proposed change.

143) Could any of the notices in the Supplementary information be published on alternative websites?

No

144) Please provide details

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

145) Using the following table, advise how you think information should be made available:

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report Both Both				
Section 5.75 & 5.76	Primary and Annual returns – for Elected members Includes – sources of income Trusts Debts Property holdings. Interests and positions in corporations. Both				
Section 5.87	Discretionary disclosures generally Both				
Section 5.82	Gifts (already required to be on the website) Both				
Section 5.83	Disclosure of travel contributions (already required to be on the website) Both				
Elections Regulations 30H	Electoral gifts register Both				
Section 5.98A	Allowance for deputy mayor or deputy president				

	Both
Section 5.100	Payments for certain committee members Both
Functions and General Regulations 17	Tenders register Both
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees Both
	Minutes of council, committee and elector meetings Both
	Future plan for the district Both
	Annual Budget Both
	Notice papers and agendas of meetings Both
	Reports tabled at a council or committee meeting Both
	Complaints register (concerning elected members) Both

Contracts of employment of the CEO and other senior local government employees	Both
Schedule of fees and charges	Both
Proposed local laws	Both
Gazetted Local laws (and other law that has been adopted by the district)	Both
Rates record	Both
Electoral roll	Both

Note: There is no intention to amend the current limitations imposed by section 5.95 of the Act which limits the disclosure of certain information.

146) Should the additional information that is available to the public in other jurisdictions be available here?

Yes

147) If so which items?

148) How should they be made available: in person, website only or both?

149) Is there additional information that you believe should be made publicly available? Please detail.

150) For Local Governments: How often do you receive requests from members of the public to see this information?

n/a

151) What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

N/A

Access to information: Guidance question

152) Do you have any other suggestions or comments on this topic?

nil

9. Available information

9.1 Expanding the information provided to the public

Expanding the information provided to the public: Guidance questions

153) Which of these options do you prefer?

Option 2: Additional reporting requirement

154) Why?

Transparency and timeliness of reporting is critical to ensure the public support and engage with Local Government.

155) In the table below, please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government:

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	Required
Diversity data on council membership and employees	Required
Elected member attendance rates at council meetings	Required
Elected member representation at external meetings/events	Not Required
Gender equity ratios for staff salaries	Required
Complaints made to the local government and actions taken	Required
Performance reviews of CEO and senior employees	Required

Proposal	Should this be made available: No, optional, required?
Website to provide information on differential rate categories	Required
District maps and ward boundaries	Required
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	Required
Financial and non-financial benefits register	Required

156) What other information do you think should be made available?

Expanding the information available to the public: Guidance question

157) Do you have any other suggestions or comments on this topic?

Defining red tape: Guidance questions

158) Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions.

a) Briefly describe the red tape problem you have identified.

Nil

I

b) What is the impact of this problem? Please quantify if possible.

Nil

c) What solutions can you suggest to solve this red tape problem?

Nil

159) Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions.

a) Briefly describe the red tape problem you have identified.

Nil

b) What is the impact of this problem? Please quantify if possible.

Nil

c) What solutions can you suggest to solve this red tape problem?

Nil

10.1 Potential red tape reductions

Special majority: Guidance question

160) Should the provisions for a special majority be removed?

No

161) Why or why not?

N/A

Senior employees: Guidance questions

162) Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?

Not appropriate

163) Is it necessary for some employees to be designated as senior employees?

Yes

164) If so, what criteria should define which employees are senior employees?

Conflict of interest

Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

165) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124?

Yes

166) Why or why not?

Disposal of property: Guidance questions

167) The threshold for trade-ins was set originally to \$50,000 in 1996 and raised to \$75,000 in 2015. Should that threshold be raised higher,

Yes

168) if so how high?

169) Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?

- 170) The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000?
- 171) If so, what should it be and why?
- 172) Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?
- 173) Is there an alternative model for managing the disposal of property? Please explain.

Reducing red tape: Guidance question

- 174) Do you have any other suggestions or comments on this topic?

Nil

11.1 Risks and benefits of borrowing

Regional subsidiaries: Guidance questions

- 175) Which option do you prefer?
- 176) Should regional subsidiaries be allowed to borrow money other than from the member councils?
- 177) Why or why not?

- 178) If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?

Regional subsidiaries: Guidance question

- 179) Do you have any other suggestions or comments on this topic, including on any other aspect of the *Local Government (Regional Subsidiaries) Regulations 2017*?

Local Government Act review: Guidance question

- 180) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.